

CUYAMA PHOSPHATE CORPORATION

IBLA 73-111

Decided August 17, 1973

Appeal by Cuyama Phosphate Corporation from a decision by the Riverside District and Land Office, Bureau of Land Management, notifying Cuyama of default in rental and royalty payments due on a phosphate lease.

Affirmed as modified.

Phosphate Leases: Rentals -- Phosphate Leases: Royalties

A notice of default for accrued rents and royalties due on a phosphate lease is properly issued where the lessee does not dispute the deficiency but only offers an explanation of its operating and marketing problems.

APPEARANCES: J. H. Finney, Cuyama Phosphate Corporation, pro se.

OPINION BY MR. RITVO

Cuyama Phosphate Corporation has appealed from a decision of the Riverside District and Land Office dated July 10, 1972, notifying it that it is in default in rental and royalty payments due on phosphate lease R 311 in the amount of \$2,994.80. The decision further stated that, if the default continued for 30 days, steps would be taken to satisfy the debt from the government bonds Cuyama had posted as security for the bond required by the lease.

Cuyama does not dispute the amount due but stresses its financial outlays in the project and other problems it has had mining the leased lands. The product has not proved to be as profitable as Cuyama had hoped and it appears the lessee may take a substantial financial loss, perhaps as much as \$200,000.

The Land and District Office is not authorized to waive the delinquency in rental and royalty payments because of operating and

marketing difficulties. It issued the default notice at the request of the Regional Mining Supervisor of the Geological Survey, which administers producing leases. 43 CFR 3503.1-2(b); lease sec. 2(e). Therefore, the decision properly notified appellant of the default and the steps that would be taken to collect the amount owed if it were not paid. To this extent, the decision is affirmed.

However, we note that appellant may have been attempting to avail itself of section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1970), and the related regulation, 43 CFR 3503.3-2(d). Section 39 authorizes the Secretary under certain circumstances to waive, suspend or reduce rentals or minimum royalty. The regulation sets out in detail to whom the request must be made (the mining supervisor) and the supporting information that must be furnished.

While the notice of appeal offers matters that might be pertinent to a waiver or reduction of rentals, it does not supply all of the information required by the regulation. Furthermore it was not submitted to the proper office. Thus, appellant's request for a waiver or reduction, if such it be, is not ripe for adjudication.

To give appellant time to proceed properly, if it so desires, this decision is suspended for 30 days. If within that time Cuyama files a proper application for a waiver or reduction of rentals, this decision will be suspended until such application is adjudicated.

Therefore, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District and Land Office is affirmed subject to the conditions set out herein.

Martin Ritvo, Member

We concur:

Newton Frishberg, Chairman

Joseph W. Goss, Member

